

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Assessment and Collection of)
Regulatory Fees for Fiscal)
Year 1995)

MD Docket No. 95-3

To: The Commission

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REPLY COMMENTS OF METROCALL, INC.

Metrocall, Inc. ("Metrocall"), through its undersigned counsel and pursuant to Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415 and 1.419, respectfully submits these Reply Comments in response to the Notice of Proposed Rule Making ("NPRM") adopted by the Commission in the above-referenced proceeding.¹

I. Statement of Interest.

Metrocall has long been authorized to provide RCC and PCP paging services pursuant to Part 22 and Part 90 of the Commission's Rules. Metrocall currently provides wide-area paging services to thousands of subscribers at various locations throughout the United States, and continues to expand its paging services in order to meet the growing public demand for rapid, efficient, and reasonably-priced one-way signalling services.

Metrocall currently holds licenses for over 900 base station transmitters operating on frequencies in the 929 and 931 MHz band, and has pending applications for many more such stations. The proposed changes in the regulatory fee schedule for Public

¹ Notice of Proposed Rule Making, MD Docket No. 95-3, (released January 12, 1995).

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Mobile Radio licensees are likely to have an immediate, adverse, financial impact on Metrocall's paging business. Consequently, Metrocall is a party in interest in this rulemaking proceeding. This Reply is limited to the proposed regulatory fee changes that would affect Public Mobile Services ("PMS"), and comments submitted in response thereto.

II. Metrocall Supports PCIA and MobileMedia's Position.

Metrocall agrees with the Comments filed by the Personal Communications Industry Association (PCIA), MobileMedia Communications, Inc. ("MobileMedia"), and other PMS operators that oppose the fee increase proposal. PCIA explained that the net effect of increasing PMS operator fees from six cents to 13 cents, and the use of "mobile units" as the basis for the fee calculation, will be to increase PMS operators' regulatory fees at an unjustified rate; much greater than the 93% authorized by Congress.² Second, there is no statutory basis for the FCC to use the term "mobile units" to determine fees. Finally, there has been no apparent improvement in the FCC's regulatory services for PMS operators in the past year that would justify this increase.

III. Adverse Impact of Fee Increases on Paging Industry.

The paging industry is highly competitive, requiring

² See, Comments of Personal Communications Industry Association, at 4. See also, Comments of MobileMedia Communications, Inc., at 3.

companies to continually expand their operations, and to offer customers better, more efficient services. Not only do one-way paging companies compete against each other for subscribers, but, competition stems from two-way paging companies, cellular telephone companies, specialized mobile radio operators and, in the near future, Personal Communications Services. The structure of the paging industry requires companies to continually re-invest substantial funds to finance the continued development of existing and future operations, while at the same time, offering competitive prices.

The paging industry is the perfect embodiment of the FCC's primary, statutory goal of offering rapid, efficient, nationwide communications service at reasonable prices. See 47 U.S.C. § 1(a). The industry is also furthering Chairman Hundt's goal of creating more jobs and improving productivity in this country. In a recent speech addressing the Cellular Telecommunications Industry Association's annual convention, Chairman Hundt praised the wireless industry's growth, stating that competition "will create hundreds of thousands of jobs and spur tens of billions of dollars of investment." See FCC Public Notice, (released February 1, 1995).

This is not an industry that simply rakes in money and pockets enormous profits. To the contrary, paging companies reinvest most of their earnings into new plant and services for their customers; with the result that paging companies operate at "break even" or loss levels for long periods of time. Unlike the

telephone industry, which is a highly regulated and profitable monopoly, or the cellular industry, a regulated "duopoly," paging companies cannot simply pass on increased regulatory fees to their customers in their rate base. Price competition places a substantial constraint on a paging company's ability to absorb additional regulatory costs and burdens. Consequently, the FCC's proposed fee increase, which in Metrocall's case could total in excess of \$100,000 in additional annual fees, will be highly detrimental to the paging industry.

The regulatory fee increase is not an isolated regulatory burden on an already overburdened industry. For the past five years, the FCC has raised application filing fees, added annual regulatory fees, and adopted competitive bidding procedures for all PMS services. In return, PMS operators have not seen a corresponding improvement in regulatory services.

In the past 18 months, delays in processing Part 90 applications have escalated from 60 to 180-190 days. The agency is only now processing 931 MHz applications that were filed with the FCC last June. Because of the agency's computer problems, it is virtually impossible to receive a corrected license reprint, or rely upon the accuracy of the information in the FCC's database. While other regulatory agencies have moved to "on-line" filings and information retrieval, the FCC still requires applicants to microfiche applications and pleadings. That expense alone can cost PMS operators thousands of dollars each year.

Though the FCC is attempting to address many of these critical problems, until these problems are corrected, it would not be appropriate to increase PMS regulatory fees by 100 to 500%. Without a comparable improvement in services to PMS operators, this fee increase is unjustified and would be an unfair burden on an already over-burdened industry.

IV. The Increase Is Unjustified.

In its NPRM, the FCC proposed to increase PMS operators' regulatory fees from six cents to 13 cents. See NPRM at ¶ 44. Moreover, the FCC proposed to switch from using "subscribers" to "mobile units" to determine PMS operators fees. Id. PCIA determined that the combination of the switch to mobile units and the increase to 13 cents, will increase PMS regulatory fees five to ten times.³ MobileMedia has calculated that because of these fee increase proposals, it will owe \$150,000 more in annual fees this year alone.⁴ Metrocall's annual "fee bill" will likely increase at a similar rate. The FCC has not justified the increase, and has exceeded the regulatory increases allowed by Congress. See NPRM at ¶ 3. The proposed increase will place a disproportionate burden on PMS operators, without any indication that regulatory services to PMS operators, and the paging industry in particular, will improve at a proportionate rate.

³ See Comments of PCIA, at 4.

⁴ See Comments of MobileMedia Communications, Inc., at 1.

V. The FCC Should Maintain the Use of the Term "Subscribers" to Calculate Fees.

The FCC proposed to replace using "subscribers" as the basis for determining PMS operator fees, with the term "mobile units." See, NPRM at ¶ 44. The FCC has defined mobile units as mobile call signs or telephone numbers, including paging units and resellers. Id.

The FCC has no statutory authority to arbitrarily change the basis for fee calculations. As PCIA stated, "[t]he proposed conversion to units as the basis of payment is contrary to the statutory intent, is inconsistent with established policies, and would impose an unfair burden on Part 22 paging providers." ⁵

In its 1993 Budget Act, Congress enacted the regulatory fee schedule. Congress expressly adopted the term "subscribers" for purposes of assessing fees on Part 22 licensees. The FCC's authority to make permissive changes in the fee schedule does not extend to making changes in the statutory terms Congress adopted for determining fees.⁶ The FCC's proposal to alter statutory definitions oversteps the agency's limited regulatory authority. The FCC should continue to use the term "subscribers" to determine regulatory fees.

VI. There Has Been No Increase in Regulatory Services for Part 22 Paging Operators.

The NPRM states that the proposed fee increase is

⁵ See PCIA's Comments at 5.

⁶ See, 47 U.S.C. § 159.

"equitable," without further explanation of the equities in question. NPRM at ¶ 44. Indeed, the NPRM does not even suggest that the fee increase is warranted by a quantifiable increase or improvement in enforcement, policy and rulemaking, user information services or "international activities" relating to PMS.

Because the FCC's authority to assess and collect regulatory fees is directly related to these tasks, this agency should be required to provide the PMS industry with quantifiable evidence of improvements in these regulatory tasks, before even considering raising regulatory fees. The NPRM is noticeably silent in that regard: there is not even a suggestion that the fee increase is related to improvements in agency services. Therefore, the FCC should reassess its proposal, and adopt a fee schedule that is truly fair and equitable to the paging industry. The "old" fee schedule is much more equitable to licensees than the NPRM's proposal.

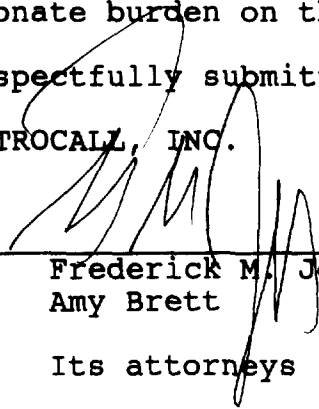
Conclusion

Metrocall respectfully requests that the Commission retain subscribers as the basis for determining Public Mobile Services regulatory fees, and that it retain the six cents (\$.06) per subscriber regulatory fee. The public interest warrants that the FCC drop the proposed regulatory fee increase to ensure fair and equitable treatment for paging operators, and to avoid placing an inequitable and disproportionate burden on the paging industry.

Respectfully submitted,

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February 28, 1995

CERTIFICATE OF SERVICE

I, Glenda Sumpter, a secretary in the law firm of Joyce & Jacobs, do hereby certify that on this 28th day of February, 1995, copies of the foregoing Reply Comments of Metrocall, Inc. were mailed, postage prepaid, to the following:

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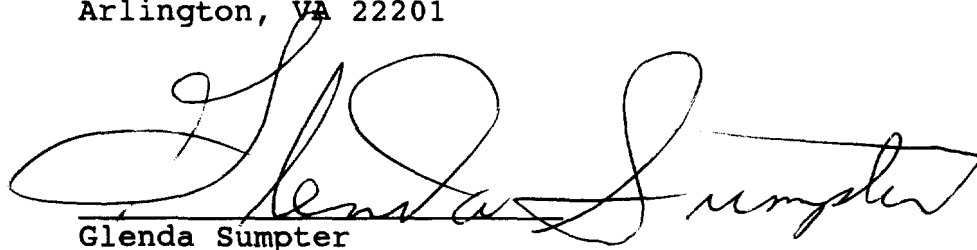
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